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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 225

BAKERY SALES DRIVERS LOCAL UNION No. 33, AN UNINCORPORATED ASSOCIATION, ET AL., PETITIONERS,

vs.

A. WAGSHAL, TRADING AS "WAGSHAL'S DELICATESSEN"

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 24, 1947.

CERTIORARI GRANTED OCTOBER 13, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No.

BAKERY SALES DRIVERS LOCAL UNION No. 33, AN UNINCORPORATED ASSOCIATION, AND CHARLES M. ANDRE, PETITIONERS,

vs.

A. WAGSHAL, TRADING AS "WAGSHAL'S DELICATESSEN"

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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[fol. 1] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

A. WAGSHAL, Trading as, "Wagshal's Delicattessen", 4855 Massachusetts Av., N. W., Plaintiff,

vs.

BAKERY SALES DRIVERS LOCAL UNION No. 33 and Unincorporated Association, and Charles M. Andre, Individually, and as President and Associate Business Agent of Said Union, Defendants

COMPLAINT FOR INJUNCTION AND DAMAGES—Filed August 18, 1945

The complaint of the plaintiff respectfully represents:

1. That she is a citizen of the United States and a resident of the District of Columbia and has been such for many years; that she now is and for many years has been, the owner of the business above named; that said business, conducted through her manager and employees in a store at 4855 Massachusetts Avenue, Northwest, in the District of Columbia, consists of dealing in and supplying at retail, hundreds of various kinds of plain and fancy foods and delicacies for human consumption, most of which are prepared, packed and canned by various manufacturers located in the several States in the United States and abroad. Food is also prepared and served in said store of plaintiff to many patrons, many of whom are in the Naval and Military services of the United States; that among other kinds of said foods, plaintiff sells and serves large quantities of bread, rolls, pastries, and other bakery products, the same which are absolutely essential to the conduct of plaintiff's said business.

2. To offer larger and better facilities to the public, plaintiff has, shortly prior to the matters, hereinafter set forth occur-ing, expended about $10,000, for modernized equipment and alterations. Plaintiff's sale of said merchandise and serving of food aforesaid, totals about $100,000, per annum.

[fol. 2] 3. The defendant number one is an un-incorporated association, commonly called a "labor union" composed of many members who are mostly bakery drivers. About 2 months prior to to wit, July 5, 1945, one of said member drivers of said defendant union, started to deliver bakery products for Hinkle's bakery, which plaintiff has dealt with for several years. Due to the repeated deliveries of said bakery products to plaintiff during the busy noon hour, he was on to wit, the day aforesaid, *required* to bring said products, bread, etc., back at a later hour. Shortly thereafter, the said Hinkle bakery, informed plaintiff that the said driver would make no more deliveries to plaintiff and therefore the bakery could make and furnish plaintiff with no bakery products. Plaintiff did immediately thereupon arrange with another bakery to secure its bakery products, the same which were delivered to the plaintiff.

4. On to wit, July 26, 1945, one Charles M. Andre, the other defendant herein, came in plaintiff's said place of business, and after stating that he was the agent of defendant union, and that a certain sum, about $150.00 was owing to the driver by plaintiff, and that it had to be paid immediately. The plaintiff informed the said agent that no dealings were had with the driver of Hinkle's bakery, that the account had always been with the bakery, and that payment was at all time made direct to the bakery by check, and never to the driver; that whatever was due Hinkle's bakery would be paid in the regular course and upon adjustment made. Defendant Andre stated he was not concerned in any adjustments or account, that payment would have to be made to the driver in full, and further, that unless plaintiff immediately discarded and discontinued carrying for sale a certain non union made item, of the many hundreds of foods, carried by plaintiff aforesaid, his union would stop and prevent any more bread and bakery products, also all dairy products, also all shipments from outside of the District of Columbia made by Railway Express Co., from being delivered to the plaintiff; that his union was formed and maintained to enforce its demands and were able to do so. Shortly thereafter payment of the balance due by plaintiff to Hinkle's bakery was made direct to said bakery minus certain credits, said payment was thereafter returned by defendant union, with a letter signed by defendant Andre as president, setting forth that the

payment, "which is owed to our member, Leon Wolfe, cannot be accepted.

[fol. 3] 5. On the following day, July 27, 1945, The New Philadelphia bakery, which had been delivering its products to plaintiff informed her that no more deliveries could be made; that the defendant union had advised them that if any more bakery — was sold or delivered to plaintiff, it would "pull out all its drivers". Plaintiff did thereafter attempt to secure bread etc., from other bakeries, but defendants, well knowing that plaintiff's continuation in business was largely based upon its being able to sell and to serve bread, and other bakery products, and conspiring and contriving to injure and to destroy plaintiff's said business, caused, by means of threats and intimidations of destroying the business of the several bakeries, the said various bakeries were thus caused to breach their contracts of sale of bread, etc., made with the plaintiff. Plaintiff has by the means aforesaid been boycotted, as was threatened to by said defendants, with all bakeries in said District, resulting in plaintiff being unable even to call at the premises of the bakeries and thereby obtain said bread, etc., for cash. Defendants have also threatened to prohibit in like manner all deliveries and sales of milk and dairy products to be made to the plaintiff, which if not enjoined, will compell plaintiff to discontinue business, to her irrep-rable damage. Plaintiff through her agents have attempted to secure bread at retail from other retail stores, but this method, too, defendants are preventing by having threatened a certain grocery store to cut of- their supply of breads, etc., if as much as one loaf of bread was sold to said plaintiff's agent. Defendants have fals-ly and maliciously stated of plaintiff, in furtherance of its boycott of plaintiff and practice of extortion and cohercion, to several of said bakeries, as reason why they must not furnish its products to plaintiff, "that plaintiff was involved in a labor dispute, the same which is false and known to be false by the defendants.

6. Plaintiff had prior to the happenings herein set forth, had and enjoyed a good reputation for honesty and fair dealing, and thereby had a good credit standing among the trade; that defendants, well knowing the same, and maliciously intending and conspiring to injure plaintiff in her good credit standing aforesaid, the same which is valuable to her business, the defendant, Charles M. Andre indi-

vidually and as agent for defendant union, stated and published the false and malicious statement, that plaintiff owed money to one of its member drivers and would not pay him. [fol. 4] All of which has caused plaintiff great damage in her business and in suffering great nervous shock and mental anguish.

7. Defendant Andre did personally stand outside of plaintiff's place of business for two days and picketed the plaintiff.

8. That said picketing and boycotting is continuing by defendants which is seriously affecting plaintiff's business, she is unable to get the kind or quantity of breadstuffs needed, and if defendants carry out their threat to prevent plaintiff from securing dairy products, she will be compelled to discontinue business.

Wherefore, the premises considered, complainant prays:

1. That defendants be restrained, pendente-lite and permanently from boycotting and in any manner interfering with plaintiff's business and cease all and all acts herein set forth tending to prevent plaintiff from securing any merchandise from any and all dealers or manufacturers.

2. That defendants and each of them and their members, associates who-soever, be restrained and enjoined from uttering or in any manner publishing and false and slanderous statements about the plaintiff and in the conduct of her business, and of any of her employees or associates.

3. That defendants be required to pay plaintiff the sum of $50,000 as actual damages and the further sum of $50,000 as punitive damages.

4. And for any other relief to which the plaintiff may be entitled.

Philip Wagshal, Attorney for Plaintiff.

Philip Wagshal, Attorney for Plaintiff, Bond Building, District 3035.

[fol. 5] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR INJUNCTION—Filed August 20, 1945

Comes now the plaintiff through her attorney, and respectfully moves this Honorable Court to issue an injunction against defendants, restraining them, and each of them, their members and associates, agents or servants, from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, and from threatening or intimidating, or to take any action whatever injurious to any persons or firms whomsoever in the attempt to prevent them from delivering, selling or serving plaintiff their products; Ane for reasons therefore respectfully says:

1. That defendants have no legal and justifiable cause or reason for their malicious acts of slander, threats, boycott and picketing and other wrongful and illegal acts, committed against plaintiff.

2. That unless defendants are so injoined and restrained, plaintiff will suffer irrepapable damage, including the total loss of her business which is valuable and has been established for many years, and which has been and yet is considered essential.

Philip Wagshal, Attorney for plaintiff.

Philip Wagshal, Attorney for Plaintiff, Bond Building.

[fol. 6] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION TO DISMISS—Filed August 22, 1945

The defendants above named, by the undersigned, their attorney, move the Court to dismiss the above entitled action because the complaint fails to state a claim against

defendants upon which relief can be granted. Defendants state the following grounds for such motion:

1. The complaint in its substance attempts to state a cause of action in equity requiring injunctive relief. The complaint and the allegations therein contained disclose that the claim of the plaintiff is founded on a labor dispute as defined in the Norris-LaGuardia Act (Sections 104, 107 and 113, Chapter 6, Title 29, U. S. C. A.), and that the Court is without jurisdiction to grant the relief prayed for both as to the prayer for injunction and for damages.

2. The controversy set forth in the complaint involves a labor dispute as defined in the Norris-LaGuardia Act. Accordingly, it is incumbent upon plaintiff to disclose by affirmative allegations that he was entitled to invoke the equitable jurisdiction of this Court as limited by such Act. This he has failed to do. Accordingly, the Court has no jurisdiction over the subject matter of the action and no [fol. 7] jurisdiction to grant relief in equity or in law.

3. The complaint on its face wholly fails to state the existence of any action, activity or conspiracy which is illegal, unlawful or contrary to the laws of the District of Columbia or of the United States or which entitles plaintiff to any injunctive relief or to any damages.

Joseph A. Padway, 736 Bowen Building, Washington 5, D. C., Attorney for Defendants.

Copy received and service acknowledged this 22nd day of August, 1945.

Philip Wagshal, Attorney for Plaintiff.

[fol. 8] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER TO MOTION TO DISMISS FILED BY DEFENDANT—Filed September 4, 1945

Now comes the plaintiff and for answer to the Motion to Dismiss filed by the defendant herein says:

1. The Complaint in substance states a cause of action requiring injunctive relief in equity. Said Complaint further discloses upon its face that there is no labor dispute as defined in the Norris-LaGuardia Act and that this Court has complete jurisdiction to grant the relief prayed for both as to the prayer for injunction and for damages;

2. Attached hereto and made part of this Answer are affidavits filed in accordance with the suggestion of said Motion to Dismiss. These affidavits further disclose upon their face that there is and can be no labor dispute existing in this case within the definition in the Norris-LaGuardia Act aforesaid;

3. For authorities in support of this her reply, plaintiff refers to the identical authorities cited by the defendant in support of its Motion to Dismiss and further to the general jurisdiction conferred upon this Court to grant injunctive relief in appropriate cases.

Philip Wagshal, Bond Building; William E. Leahy, 821-15th St. N. W.; Nicholas J. Chase, 821-15th St., Attorneys for Plaintiff.

[fol. 9] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

C. A. #30-226

A. WAGSHAL, et al., Plaintiff,

vs.

BAKER SALES DRIVERS LOCAL UNION #33, et al., Defendants

AFFIDAVIT OF BENJAMIN WAGSHAL

CITY OF WASHINGTON,
District of Columbia, ss:

Benjamin Wagshal being first duly sworn deposes and says that he is the manager of A. Wagshal, trading as Wagshal's Delicatessen, and has been for approximately nine years; that the said business has been operated in its present location for approximately seven years; that it conducts a general delicatessen business and a restaurant; that as such it carries in stock thousands of different items of merchandise and serves meals to many people each day as in the petition filed in this cause duly sets forth; that in the conduct of said business no deliveries of merchandise are made to purchasers, all purchases of merchandise being made in the store and being carried therefrom by the purchaser thereof; that no meals are delivered and all foods served for meals is served and eaten in the restaurant connected with said business aforesaid; that in the conduct of said business bread is an essential and most important item; that among the various bakeries from which the plaintiff has been purchasing bread is the bakery identified as Hinkle's Bakery, with which the plaintiff has been dealing for approximately three years; that the occasion for the action of the defendant union was in the payment for bread purchased from the said bakery; that throughout the [fol. 10] period of time the plaintiff has been purchasing bread from the owners of said bakery the plaintiff has been buying said bread directly from said bakery and been paying therefor by check made payable to the owners of said bakery; that no question was ever raised by the defendant union or any of its drivers at any time in regard to the payment being made to the said owners of said bakery; that no demand for payment was ever made by the said defend-

ant union or any driver thereof for payment for any bread bought from the said bakery to said union or any driver thereof before the occasion set forth in said petition aforesaid; that the plaintiff never had any contractual relations with the defendant union or any of its drivers; that its contract obligations were incurred with the owner of the bakery and with no one else; that this was well known to the defendant union and to the drivers who delivered bread from said bakery to the plaintiff; that this course of conduct as between said plaintiff and the owners of said bakery had, as hereinbefore stated, existed over the entire period during which the plaintiff was buying bread from said bakery; that the particular driver of the defendant union who, affiant is informed, is named Wolf, was advised by plaintiff that deliveries of bread from this bakery at the time he was delivering same were extremely inconvenient to the plaintiff and were occur-ing at a time when the restaurant business required his full attention and made it practically impossible for him to check and again properly accept deliveries and was asked for that reason to deliver said bread at some other hour when the same could be properly checked and received; that said driver then refused to deliver bread at all from said bakery to your plaintiff; that at this time plaintiff was indebted to the owners of said bakery for bread already delivered and in accordance with the said practice which had existed over the entire period of time during which plaintiff had been [fol. 11] buying bread from this bakery made his check payable to the owners of said bakery in the amount which he considered to be in full for all indebtedness then existing; that thereafter a representative of the defendant union who identified himself by the name of Andre came to plaintiff's place of business and stated that the plaintiff owed the driver of the defendant union for bread delivered in a sum greater by the amount of approximately $12.00 than that which plaintiff had paid through said check aforesaid; that thereafter, by letter dated August 8, 1945, the plaintiff received from the defendant union, on its letterhead, the return of his check "because it is $12.22 short of the amount which is owed to our member, Leon Wolf." Said letter further stated "there are two things we deeply regret. The first is, you failed to realize that the entire sum of money involved is owed to Mr. Leon Wolf, a member of this organization, and not to the Hinkle Bakery." Said letter

was signed by the union through Charles M. Andre, President. Your affiant states that plaintiff never bought any bread from Mr. Leon Wolf as hereinbefore set forth; that he never owed Mr. Leon Wolf any sum whatsoever for any cause and that his purchases of bread were always made directly with the owners of the Hinkle Bakery and paid directly to said bakery as hereinabove set forth. Furthermore, your affiant says that all orders for bread from the Hinkle Bakery were made by telephone to the Hinkle Bakery directly and that neither Mr. Leon Wolf nor any other driver of the defendant union had ever even accepted an order from plaintiff for bread for delivery on the ensuing day; that this direct practice of ordering and paying for bread from and to the Hinkle Bakery was well known to said Wolf and the defendant union aforesaid; that the said Andre aforesaid had called plaintiff on the telephone and advised plaintiff that said check would not be accepted as payment in full and accordingly it was returned; that [fol. 12] before writing the letter hereinbefore mentioned the said Andre had called at plaintiff's place of business and advised him, the said plaintiff, that he, said plaintiff, owed Wolf payment for the bread hereinbefore mentioned; that he was not interested in any difference as to the amount thereof; that the full amount must be paid as claimed by said Andre, and at that time pointed to a few packages of rolls which were then in the plaintiff's place of business and advised plaintiff that he must get rid of them; that these rolls constituted but an extremely small item of plaintiff's merchandise and in comparison with the total amount purchased and sold by plaintiff constituted an insignificant item and your affiant avers that as to this statement with regard to these rolls, Andre was making of them but an occasion for enforcing the payment of an amount due to the owners of the Hinkle Bakery and in the amount which he, Andre, contended was owing and not to Wolf, the driver and member of the defendant Union to whom Plaintiff says he never owed a cent and never had any contractual relationship or obligation whatsoever. Affiant further avers that said rolls hereinbefore mentioned have been discontinued even though the same rolls are on sale in many establishments in the city of Washington and some of them the largest in said city, and further, although no question had ever been raised by the Union or any member thereof at any time in regard to their sale on the premises of plain-

tiff, even though the said defendant union had been delivering bread to plaintiff from Hinkle's Bakery over a long period of time before this occasion not only by the driver Wolf but by others who preceded him. Affiant further say that the defendant union through its drivers delivers many other articles of merchandise to plaintiff among which are items of bread from other bakeries and other similar articles for his store as a delicatessen establishment and that never was any question raised with regard to the rolls to which Andre pointed on that occasion.

[fol. 13] Affiant further says that following the receipt of the letter hereinbefore mentioned and Andre's conversation, the said defendant Union has taken every occasion which it could possibly take to prevent your plaintiff from purchasing bread, either wholesale or retail; that the defendant caused all deliveries of bread to plaintiff to be stopped; that through its agents it advised or otherwise by telephone practically all of the bakeries in the city of Washington and even retail stores, and threatened said bakeries and stores that they would in turn each be cut off from deliveries of merchandise to them in the event they or either of them sold bread to the plaintiff; that more particularly they would pull their Union drivers from all bakeries, thereby preventing deliveries of bread and from the stores they would prevent deliveries of merchandise thereto.

Your affiant is informed and believes and therefore avers and says he will be able to prove upon the trial of this cause that said defendant Union through its agents went so far as to threaten to prevent deliveries of all merchandise of all kinds to the plaintiff including deliveries interstate and through the Express Companies and of all types and character of merchandise which the plaintiff carries for retail sale numbering many hundreds of items as hereinbefore set forth; that more particularly the defendants through its agents threatened to cut off all delivery and supply of milk, ice cream and other essential food products required by the plaintiff in serving many in the Armed Forces their lunches, etc., and their families and others who live in the neighborhood of said plaintiff's business; that the plaintiff conducts the only restaurant in that particular neighborhood which is heavily populated and widely scattered; that the Red Cross Overseas Training Unit and the Naval Communications and the Waves Barracks Center are all located in the neighborhood of plaintiff's place of

[fol. 14] business and that he has been accustomed to give luncheons and dinners to many from said Centers aforesaid; that the result of the threats made by the defendant through its agent aforesaid has made it practically impossible for him to purchase bread from any source of supply, either wholesale or retail in the District of Columbia; that he has been not only greatly inconvenienced but that the conduct of the defendant has made it almost impossible for him to continue the conduct of his business which depends so much upon his ability to supply bread to his customers. There are attached hereto certain affidavits in support of his allegations made herein to which he refers and makes part of this his affidavit in order to advise and inform the Court of the extent to which the defendant Union through its officers and agents has gone to prevent your plaintiff from obtaining bread either wholesale bakeries or at retail from retail stores.

Your affiant further says that he is financially willing and able to pay any indebtedness he owes to the owners of Hinkle's Bakery; that his conduct throughout the years in which he has been purchasing bread from that bakery has been satisfactory and that never was there any occasion for any dispute to arise between him and the owners of said bakery; that the defendant Union is now attempting by its conduct hereinbefore described, to compel the payment of a small item of $12.22 without determining the justice of the payment whether that amount is owed or not and without right in law so to do, and this to one of its drivers from whom the plaintiff never purchased any bread whatsoever, with whom the plaintiff never entered into any contractual relationship whatsoever and to whom the plaintiff could make no payment legally either in protection to himself or payment of an indebtedness owed to an entirely different person, to wit, the owners of the Hinkle Bakery.

[fol. 15] Your affiant is further informed and believes and therefore avers that the defendant Union through its officers is engaged in the practice of calling upon various bakeries and suppliers of merchandise who had theretofore been accustomed to sell to plaintiff and advising such wholesalers and suppliers that your plaintiff was indebted to a member of said defendant Union and refused to pay him. Your affiant says that plaintiff has always possessed a high reputation for financial integrity among the trade and public generally with which the plaintiff has dealt; that plain-

tiff has never owed any obligation which plaintiff has not met fully and in accordance with its terms; that plaintiff considers her financial reputation as one of plaintiff's greatest assets and that in truth and in fact the defendant Union through its officers and agents by calling upon said wholesalers and suppliers has greatly damaged your plaintiff in the esteem and reputation which the plaintiff theretofore bore; that any such statement as made by said Union is false, without foundation in fact, and as well known to the said defendant, contrary to the entire course of conduct of the plaintiff throughout the plaintiff's business dealings, not only with the Hinkle Bakery but with all wholesalers and suppliers of merchandise with whom plaintiff has had business. Your affiant further avers that the said statement so made by said defendant has been maliciously made in order to force and compel arbitrarily and capriciously your plaintiff to do and perform the wishes of the defendant Union without consideration of the damage already accomplished to the plaintiff's business and which in the future will be further done unless the said conduct of the defendant Union is enjoined by the Court.

Benjamin Wagshal.

Subscribed and sworn to before me this 4th day of September, 1945. Emily V. McKenzie, Notary Public, D. C.

[fol. 16]. [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

C. A. #30-226

A. WAGSHAL, etc., Plaintiff,

vs.

BAKER SALES DRIVERS LOCAL UNION #33, et al., Defendants

JUDGMENT FOR INJUNCTION, PENDENTE LITE—Filed September 7, 1945

Upon consideration of plaintiff's motion for an injunction and defendant's motion to dismiss plaintiff's complaint, it is this 7th day of September, 1945,

Ordered: that the defendants, Bakery Sales Drivers Local Union No. 33 and Charles M. Andre, and each of their officers, members, agents, servants, confederates, and associates, howsoever, and all persons acting in aid of, or in conjunction with them or any of them be, and they hereby are, restrained and enjoined, until the final decree in herein action, from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from threatening, intimidating, requiring or in any manner preventing any and all bakeries wheresoever located from selling, delivering and serving their products to complainant, and any and all other suppliers of merchandise or service, who do or may sell, deliver or serve complainant with any merchandise or service of any kind whatsoever, and from picketing complainant's place of business, and from uttering, or in any manner publishing of complainant anything whereby complainant's credit can or may be impaired, and from conducting any boycott whatever against complainant or in connection with the conduct of her business, and from in any manner whatsoever impeding, obstructing, interfering, with or restraining the complainant's business, and from soliciting, directing, aiding, assisting, or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

Provided the complainant shall first execute and file in this action with surety approved by the Court, an undertaking in the sum of $500.00 to make good to defendants all [fol. 17] damage by them suffered by reason of wrongfully and inequitably suing out this injunction.

T. Alan Goldsborough, Justice.

Sept. 7, '45.

Counsel for defendants has read the foregoing proposed order and objects to the whole thereof.

Jos. A. Padway, Attorney for Defendants.

[fol. 18] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

C. A. 30-226

A. WAGSHAL, etc., Plaintiff,

vs.

BAKERY SALES DRIVERS LOCAL UNION No. 33, et al., Defendants

ORDER DENYING MOTION TO DISMISS—September 7, 1945

Upon consideration of defendants' motion, plaintiffs answer, and upon consideration thereof, it is this 7th day of September, 1945.

Ordered: that defendants' motion to dismiss plaintiff's complaint, be, and the same is hereby denied.

T. Alan Goldsborough, Justice.

[fols. 19-20] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed September 10, 1945

Notice is hereby given this 10th day of September, 1945, that Bakery Sales Drivers Local Union No. 33 and Charles M. Andre hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 7th day of September, 1945, in favor of A. Wagshal, trading as "Wagshal's Delicatessen," against said Bakery Sales Drivers Local Union No. 33 and Charles M. Andre.

Jos. A. Padway, Attorney for Bakery Sales Drivers Local Union No. 33 and Charles M. Andre.

Mail copies to:

Wm. E. Leahy, 821 15th St., N. W., Bowen Bldg.
Philip Wagshal, 1404 N. Y. Ave., N. W., Bond Bldg.
Nicholas J. Chase, 821 15th St., N. W., Bowen Bldg.

[fol. 21] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 9121

BAKERY SALES DRIVERS LOCAL UNION No. 33, an Unincorporated Association,

and

CHARLES M. ANDRE, Appellants,

vs.

A. WAGSHAL, Trading as "Wagshal's Delicatessen," Appellees

MOTION TO DISMISS APPEAL—Filed April 3, 1946

Comes now the appellee, A. Wagshal, trading as "Wagshal's Delicatessen," by her attorneys, William E. Leahy, Nicholas J. Chase and Philip Wagshal, and respectfully moves the Court to dismiss the appeal in the above cause for the reason that the Order sought to be reviewed is not appealable.

On September 7, 1945, the Court below denied appellants' Motion to Dismiss the Complaint and granted appellee's Motion for a Preliminary Injunction pending final hearing. On September 10, 1945, appellants filed a Notice of Appeal. Appellants, also, on September 11, 1945, filed Notice of Intention to Apply for an Allowance of a Special Appeal. After briefs were filed by both parties, this Court denied the Special Appeal.

The cause was set down for pretrial on October 15, 1945, and for trial on October 22, 1945. The Court below had directed that the case should be advanced for trial and appellants and appellee consented to set the case down for final hearing on October 22, 1945. The case did not come on for hearing for the reason that the attorney for appellants was engaged in other matters. Later in the Fall of 1945, [fol. 22] the attorneys for both parties became engaged in various trials and the matter did not come on for final hearing. For the past several months the attorneys for the appellee have been ready for trial but for one reason or another counsel for the appellants have not been. These delays have occurred notwithstanding the direction of the Court below that the case be advanced for trial. The fore-

going is recited in order that this Court may understand the present posture of the cause in the Court below. Details may be found in the brief of appellee filed in Opposition to Petition for Allowance of Special Appeal.

The present appeal is an appeal from an Order granting a preliminary injunction and an Order denying a Motion to Dismiss the Complaint. We respectfully submit that on basic principles neither Order is a final Order, appealable under the organic statute creating this Court and, more particularly, under the decisions of the Court construing the said statute.

This Court in *New Negro Alliance, et al vs. Harry Kaufman,* 78 F. 2d 415; 64 App. D. C. 362, held that an Order granting a preliminary injunction, identical with the present Order, was not a final Order from which an appeal would lie and, accordingly, dismissed the appeal as having been prematurely brought. The mandate on reversal, while providing for dismissal of the appeal, did so without prejudice to any of the rights of the appellants to proceed further in the case in the trial Court. The cause was remanded to that Court for further proceedings.

The organic Statute, D. C. Code (1929), Title 18, Section 26; D. C. Code (1940), Title 17-101, was further construed by this Court in *Laughlin v. Berens,* 128 F. 2d 23; 75 App. D. C. 411 (1942), where after citing *New Negro Alliance v. Harry Kaufman,* and other decisions, this Court said:

> [fol. 23] "The cases referred to indicate that Congress by the statute intended to permit appeals only from interlocutory orders which if carried into effect would change or affect the actual possession of property as it existed immediately before the orders, i.e., intended to permit appeals from orders which would change the status quo ante the orders."

An examination of the aforesaid decisions, together with the opinions in the decisions set forth in the notes appended to Title 17-101, D. C. Code, 1940, would seem to make clear, beyond dispute, the conclusion that the Orders of September 7, 1945, from which appellants are now seeking to appeal are not appealable within the class of Orders described in D. C. Code, 1940, Title 17-101.

With respect to the Order overruling the Motion to Dismiss the Complaint, it would appear that *Toomey v. Toomey,* No. 8915, United States Court of Appeals for the District

of Columbia, decided April 16, 1945, and reported in Volume LXXIII, page 648, is determinative. There this Court held that the overruling of a Motion to Dismiss the original Complaint is not a final Order within the meaning of the D. C. Code, 1940, Title 17-101.

In conclusion it is respectfully submitted that sound reasons of policy, aside from the technical jurisdictional requirements, dictate that the instant cause be brought on for final hearing in the Court below before this Honorable Court is asked to pass on the questions of law involved.

Respectfully submitted, William E. Leahy, Nicholas J. Chase, 821 15th Street, N. W.; Philip Wagshal, Bond Building, Attorneys for Appellee.

Service of copy of above Motion to Dismiss Appeal had by personally serving Joseph A. Padway, attorney for Appellants, 821 15th Street, N. W., Washington, D. C., this 3rd day of April, 1946.

Nicholas J. Chase.

[fol. 24] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER FOR ARGUMENT—May 13, 1946

On consideration of appellee's motion to dismiss the above-entitled appeal, and the Court desiring to hear argument on the question whether the case involves a labor dispute under the Norris-La Guardia Act, It is

Ordered that the case be placed on the summary docket and set for argument at the June Term on the single question hereinbefore noted.

Per Curiam.

Dated May 13, 1946.

[File endorsement omitted.]

[fol. 25] [File endorsement omitted]

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

No. 9121

BAKERY SALES DRIVERS LOCAL UNION No. 33, an Unincorporated Association, and CHARLES M. ANDRE, Appellants

v.

A. WAGSHAL, Trading as "Wagshal's Delicatessen," Appellee

Appeal from the District Court of the United States for the District of Columbia

OPINION—Decided April 28, 1947

Mr. Herbert S. Thatcher, with whom Mr. Joseph A. Padway and Miss Jacqueline Wemple were on the brief, for appellants.

Mr. William E. Leahy, with whom Mr. Philip Wagshal and Mr. Nicholas J. Chase were on the brief, for appellee.

Before Edgerton, and Clark and Wilbur K. Miller, JJ.

CLARK, J.:

Technically, this cause is before us on an appeal from an order of the District Court overruling appellants' Motion to Dismiss and an order of the District Court granting an injunction pendente lite against appellants. Appellants' petition for allowance of a special appeal from the same orders, filed subsequent to the filing of the Notice of Appeal of right, was denied by this Court at the October term, 1945. Appellee moved to dismiss the appeal on the ground that neither order is a final order appealable to this Court. Appellants answered this motion to dismiss by alleging that the cause involved a "labor dispute" and was appealable as a matter of statutory right under the Norris-LaGuardia Act. This Court at the April term, 1946, ordered that the case be placed on the summary docket and set for argument on the single question as to whether the case involves a labor dispute under the terms of the Norris-LaGuardia Act. That, therefore, is the only question now to be considered by this Court.

This litigation arises out of these facts. Appellee here, plaintiff below, is the owner and operator of a delicatessen. Appellants, defendants below, are a local union organization of bakery drivers, as well as the Union's business agent. Appellee had been for a number of years the purchaser of a considerable quantity of bakery products from Hinkle's Bakery, delivered by a Union driver, who, it is undisputed, was an employee of Hinkle and not of appellee. For some [fol. 26] time prior to July 5th, 1945, the Union driver had been making deliveries to appellee at the noon hour.

This schedule was unsatisfactory to appellee because a luncheon business was operated in conjunction with the delicatessen and at this hour it was inconvenient, if not impossible, for appellee to check the bakery delivery with the driver. Appellee requested delivery at a later hour. Thereafter, Hinkle's Bakery advised appellee that the driver would make no further deliveries to her establishment and that the bakery could make and furnish appellee with no more bakery supplies. Appellee then turned to other sources for supplies and secured another connection on terms mutually agreeable to both parties.

It is undisputed that throughout the relationship between Hinkle and appellee, appellee had been consistently in the habit of paying all accounts directly to Hinkle.

On July 26, 1945, business agent Andre, representing the Union, appeared at appellee's place of business and stated that $150 was due and owing to the bakery driver who had refused further deliveries. Demand for immediate payment was made. Appellee's manager countered with the claim that he did not owe the driver anything since his practice had always been to pay directly to the bakery.

On this visit the Union representative demanded that payment be made to the driver, and also told appellee that he should immediately stop selling a certain non-Union made item that he observed in appellee's establishment. The latter portion of the demand was complied with by appellee and the sale of the non-Union item was discontinued. Appellee's manager was told that if he did not comply with all of these demands the drivers' Union would stop all shipments of bakery, milk and dairy products coming to his store from any source, even by Railway Express from outside the District of Columbia. Shortly thereafter appellee made payment, by check, to the bakery, conformable to her contractual relationship with the bakery and as had

always been her practice. The check was returned by the Union representative with a letter which stated that it could not be accepted in settlement because "it was $12.22 short of the amount which is owned (sic) to our member, Leon Wolf."

On July 27, 1945, the New Philadelphia bakery which had been delivering bakery products to appellee, notified appellee that no more deliveries could be made inasmuch as appellant Union had threatened to pull out all of its drivers if any products of any sort were sold or delivered to appellee.

Sometime late in July 1945, the drivers' Union set up a boycott against appellee which was successful in keeping appellee from purchasing bread either from bakers or retail stores in Washington or surrounding territory, even to the extent of a single loaf of bread. In addition to the boycott, aimed at shutting off the necessary food supplies, appellee's business was picketed by defendant Andre personally and by others and it was generally stated by the Union that appellee was involved in a "labor dispute" with the Union.

In addition to the undoubtedly effective boycott as to bakery products, plaintiff's complaint alleged (and it must be taken to be admitted by the defendants' motion to dismiss) that the defendants had also threatened to prohibit in like manner all deliveries and sales of milk and dairy products to be made to plaintiffs, which, if not enjoined, [fol. 27] would compel plaintiff to discontinue business to her irreparable damage.

On these essential facts appellee brought a complaint in the lower court asking that the Union be restrained pendente lite and permanently from boycotting and interfering with her business, and from publishing false statements. In addition to the injunctive relief requested, damages in the amount of $50,000 were asked, along with an equal amount of punitive damages. After hearing extensive argument and considering affidavits, the trial court overruled appellants' motion to dismiss and granted appellee's petition for an injunction pending trial.

Under this court's order, as noted supra, the single question before us now is: Does the complaint show the existence of a "labor dispute" as the term is defined in the Norris-LaGuardia Act.[1]

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[1] 29 U. S. C. 101.

If the question is to be answered in the affirmative, it seems clear that the temporary injunction was erroneously granted, for the standards prescribed by Section 7 and 9 of the Act as necessary to the issuance of injunctive relief were not met.[2]

In our opinion the facts of the instant case are so different from those in the two leading cases in this court cited

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[2] Section 7 reads in pertinent part: "No Court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in sections 1-15 of this title, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued, on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

Section 9 provides: "No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order

and relied upon by appellants, as to take the case clearly outside those decisions.[3] In those cases exacting considera-
[fol. 28] tion was given to the underlying principles which support the Norris-LaGuardia Act, and we are not disposed to modify or repudiate the policy fundamentals expressed in those opinions. We are here concerned with the specific problem of determining whether the trial court was correct in its judgment that on the facts before it no "labor dispute" within the terms of the Act, and the decisions under it, was made out.

In the first place appellants appear to urge that the mere fact that the complaint was directed toward a union, by a commercial concern which admittedly had some contact but no contractual relations with union members, is sufficient to subject the controversy to the interdiction of the Act. This argument, we think, goes substantially beyond the points decided, and the interpretations established in precedent cases. It is an unwarranted advance from the terms of the statute and the judicial interpretations stating that the proximate relationship of employer and employee need not exist in order that there be shown a labor dispute within the meaning of the law. See *Lauf* v. *Shinner*, 303 U. S. 323; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552. If we were to accept appellants' argument on this point we would be providing a basis whereby even the most remote and casual association with a union employee, which resulted in disagreement, would be classed a "labor dispute". The protection of labor in its broad programs of organization, and in its specific efforts to advance the individual and collective well being of its membership does not require that we open the way, through interpretative expansion of the

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or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and shall be expressly included in said findings of fact made and filed by the court as provided in sections 1-15 of this title. Mar. 23, 1932, c. 90, Sec. 9, 47 Stat. 72."

[3] Green v. Obergfell, 73 App. D. C. 300, 121 F. (2d) 46, cert. denied, 314 U. S. 637; Fur Workers Union, Local No. 72 v. Fur Workers Union No. 21238, 70 App. D. C. 122, 105 F. (2d) 1, aff'd 308 U. S. 522.

concept of "labor dispute", to unbridled attacks upon commercial interests which may by chance or misadventure brush a union or a union member. As appears from the decided cases, the courts have been most liberal in holding that wherever the facts show a bona fide labor controversy, founded upon genuine issues involving the protection of labor in pursuing its legitimate objectives, the Norris-LaGuardia Act is an effective bar to injunctive relief . . . even where the employer may in effect be an innocent bystander. It does not follow from this that, where the facts do not support the assertion that there is in *fact* a dispute, the union should have the benefit of the doubt, as against the interest in protecting the rights of private property owners whose business may be jeopardized by labor's antagonism.

The Norris-LaGuardia Act was passed to correct certain great abuses by management in the use of the injunctive process during the earlier struggles of the trades unions to gain economic and social rights for their membership. It was obviously intended by Congress to be a highly remedial Act and as such is to be liberally construed by the courts. And, indeed, it has been construed with the most extreme liberality to such a degree that it might be said with some justice that there have been extensions of the purposes of the Act not by legislative enactment but by judicial legislation. Be that as it may, no court so far as we are advised or have been able to find has ever gone so far in extending and defining the Act as to apply it to a situation where the business agent of a union, having no contractual relations whatever with the proprietor of any business, takes it upon himself to act as the volunteer collection agent for a third party and attempts by threats, picketing and boycott to ruin a legitimate business over a difference of $12.20 between [fol. 29] original parties to a transaction to which the business agent was an intruder and which should have been determined in the Small Claims Branch of the Municipal Court. To maintain that such gratuitous interference on the part of defendant Andre constitutes a "labor dispute" within the careful definitions of the Norris-LaGuardia Act is ridiculous.

As in all cases where two readily acceptable basic policies collide, it is the court's function to weigh and balance the

conflicting interests.[4] Here we have the interests of labor under its protective shield of the anti-injunction legislation to measure against the interests and rights of the appellee. Viewing the problem in the light of facts before the trial court, we think the result which was reached is correct.

Turning to the specific items alleged as constituting a labor dispute we find that the first relied upon is the matter of delivery hours. The appellee admittedly objected to taking delivery at the time the particular driver involved desired or, because of route restrictions, had to make delivery. The question here is whether this amounts to a controversy concerning the "hours of employment." Here appellee asked for a more favorable delivery time, but when told that this driver could not or would not make delivery at any other time, the matter was dropped, and appellee turned to another bakery (also served by union drivers) for supplies. From this situation we fail to perceive how a "dispute" may be said to exist. It cannot create a dispute for a tradesman to accede to the demands of the adversary, and to attempt to conduct a business notwithstanding disadvantages may be suffered by the tradesman.

As for the alleged controversy regarding the money due to the driver, it does not anywhere appear that there was any obligation running from appellee to the driver or to the union. The purchases of bakery products were made from the bakery, and payment was sent to the bakery. So far as appellee was concerned any payment to the driver was a matter between the bakery and the driver, as its employee. This arrangement cannot, in our judgment, be tortured into a dispute as to "wages."

To suggest, as appellants do in their brief, that an employee of an independent contractor (The Hinkle Bakery occupied no relationship to appellee save that of seller and buyer) who, for reasons of his own, refused to continue delivery on behalf of his own employer and induced the employer (Hinkle) to discontinue sales is "a striker," and further to suggest that for appellee to attempt to obtain his

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[4] See particularly Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797, where Labor's protective legislation was held not to shield the union from the provisions of the Sherman Act.

bakery supplies from other independent sellers is to replace a striker with another laborer, is reductio ad absurdum.

Equally untenable is the theory that because defendant Andre is the business agent of a union and chooses to turn himself into a volunteer collection agent for the Hinkle Bakery he thereby creates a labor dispute within the meaning of the Norris-LaGuardia Act.

There is the further item concerning the non-union product found in appellee's establishment by the union agent. As to this it appears from affidavits in the record that upon receiving the demand to discontinue selling this non-union item, it was eliminated from the products offered for sale by appellee. Appellant contends that appellee cannot rely [fol. 30] upon the affidavits in question because the Act proscribes their use. We think the appellee's response to the contention represents the correct view. The question for determination was a preliminary one to be decided in terms of the trial court's general equitable jurisdiction. To determine whether that jurisdiction existed in the face of the Norris-LaGuardia Act, the court properly took into account the affidavits before it.

There being, in our opinion, no bona fide "labor dispute," we do not think that in the present situation the terms of the injunction require modification.[5]

Appeal dismissed.

EDGERTON, J., *dissenting:*

It seems to me clear that this is a "case involving or growing out of a labor dispute." The Norris-LaGuardia Act forbids injunctions in such cases unless specified requirements are met. These requirements include (1) a complaint under oath; (2) testimony taken in open court; and (3) "findings of fact by the court, to the effect—(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained . . .; (b) That substantial and irreparable injury to complainant's property will follow; (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting

[5] *Cf.* the underlying fact situation in Thornhill v. Alabama, 310 U. S. 88.

of relief; (d) That complainant has no adequate remedy at law; and (e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."[1] In this case the complaint was not under oath, no testimony was taken in open court, and no facts were found. It is not even contended that the facts required by the Act existed.

The court states that appellee "requested" delivery at a later hour. Appellee's complaint states that the driver was "required" to deliver at a later hour. Appellee would not take delivery at the old hour and the driver would not make delivery at a new hour. Since the Act makes it immaterial "whether or not the disputants stand in the proximate relation of employer and employee," this dispute concerning the time when the driver's work should be done was as plainly a labor dispute as if it had concerned the introduction of a night shift in a factory. Afterwards a dispute arose over appellee's alleged sale of non-union goods. This also was a familiar type of labor dispute. It is immaterial whether the dispute over the driver's money claim was or was not a labor dispute. One labor dispute brings the Norris-LaGuardia Act into operation. Here there were at least two. Since the boycotting, picketing and other conduct of which appellee complains grew out of these disputes, this is a "case involving or growing out of a labor dispute."

The court takes the somewhat paradoxical position that the disputes regarding working hours and non-union goods [fol. 31] were not labor disputes. Its theory is that there is no labor dispute unless the court thinks the interests the defendants seek to promote are "legitimate" and are more important, on balance, than the conflicting interests of the plaintiffs. The court identifies the statutory term "labor dispute" with the court's concept of a "bona fide labor controversy, founded upon genuine issues involving the protection of labor in pursuing its legitimate objectives." But the Act says nothing about the legitimacy of objectives or the balancing of conflicting interests. The Supreme Court has overruled this court's theory in these words: "To say, as the Circuit Court of Appeals did, that the conflict here is not a good faith labor issue, and that therefore there is no

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[1] 47 Stat. 71, § 7, 29 U. S. C. § 107. *Cf.* footnote 2 of the opinion of the court.

'labor dispute,' is to ignore the statutory definition of the term . . . ."[2] That definition is: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiation, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."[3] The rights and wrongs of the disputes and of the conduct growing out of them, as to which I express no opinion,[4] have nothing to do with the question whether this is a "case involving or growing out of a labor dispute."

The court's ruling comes to this, that the Act has no application to labor activity which a court thinks illegal or improper. But the Act has no practical application to anything else, for courts have never enjoined labor activity which they thought legal and proper. Therefore the court's ruling not only conflicts with the Act but nullifies it. The Act was passed for the very purpose of preventing courts, except in the extraordinary circumstances specified in the Act, from issuing injunctions against labor activity which they thought illegal or improper. There is no finding and no contention that those extraordinary circumstances were present here.

The court holds also, in effect, that to replace a striker with another worker is to "accede to the demands" of the striker,[5] ends any dispute, and prevents further activity on his behalf from growing out of a dispute.

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[2] *Milk Wagon Drivers' Union, Local No. 753* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, 99.

[3] 47 Stat. 73. § 13(c), 29 U. S. C. § 113(c).

[4] Except that the peaceful picketing which the District Court enjoined was within appellants' rights under the Constitution. *Thornhill* v. *Alabama*, 310 U. S. 88; *Bakery and Pastry Drivers and Helpers Local 802* v. *Wohl*, 315 U. S. 769.

[5] It may be that the driver was not technically a striker, since he did not stop working for his immediate employer Hinkle's Bakery. But he is in the same position as a striker for the purposes of the Act and of this case, since the Act makes it immaterial "whether or not the disputants stand in the proximate relation of employer and employee."

[fol. 32] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, APRIL TERM, 1947

No. 9121

BAKERY SALES DRIVERS LOCAL UNION No. 33 &c., et al., Appellants,

vs.

A. WAGSHAL, Trading &c., Appellee

ORDER OF DISMISSAL—April 28, 1947

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and on a motion to dismiss, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that this appeal be, and it is hereby, dismissed, with costs.

Per Mr. Justice Clark.

Dated April 28, 1947.

Dissenting opinion by Mr. Justice Edgerton.

[fol. 33] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed June 11, 1947

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above entitled cause, and include therein the following papers contained in the transcript of record for the District Court—

1. Complaint for Injunction and Damages.
2. Motion for Injunction.
3. Motion to Dismiss.
4. Answer to Motion to Dismiss filed by Defendant.

5. Affidavit of Benjamin Wagshal.

6. Judgment for Injunction Pendente Lite, dated September 7, 1945.

7. Order Denying Dismissal of Cause, dated September 7, 1945.

8. Notice of Appeal under Section 10 of Norris-LaGuardia Act.—

and the following papers which are part of the record in the Court of Appeals:

9. Motion to Dismiss Appeal.

10. Order setting case on summary docket for argument at the June Term, 1946.

11. The Majority and Dissenting Opinion.

12. Judgment.

[fol. 34] 13. This designation.

14. Clerk's Certificate.

Joseph A. Padway, Herbert S. Thatcher, Jacqueline Wemple, 736 Bowen Building, Washington 5, D. C., Counsel for Appellants.

[fol. 35] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 36] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1947

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Rutledge took no part in the consideration or decision of this application.